

Senate Bill No. 110

Passed the Senate July 24, 2003

Secretary of the Senate

Passed the Assembly July 17, 2003

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day of
_____, 2003, at _____ o'clock __M.

Private Secretary of the Governor

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CHAPTER _____

An act to amend Sections 3400 and 10129 of the Public Contract Code, relating to public contracting.

LEGISLATIVE COUNSEL'S DIGEST

SB 110, Margett. Public contracts: contract specifications.

Existing law provides that a state agency, political subdivision, municipal corporation, district, or public officer responsible for letting public works contracts may not draft bid specifications in a manner that limits the bidding to any one concern or product, except under certain circumstances. Existing law authorizes a bid specification of a certain product if the awarding authority makes a finding that a particular material or service is designated by a brand or trade name, either to make a field test or to match a material or service in use on a particular public improvement.

This bill would also authorize a bid specification of a certain product if the awarding authority makes a finding that a particular material or service is designated by a brand or trade name in order to obtain a necessary item that is only available from one source or to respond to a local or state declared emergency.

This bill would declare that the changes made by this bill codify existing California case law.

The people of the State of California do enact as follows:

SECTION 1. Section 3400 of the Public Contract Code is amended to read:

3400. (a) No agency of the state, nor any political subdivision, municipal corporation, or district, nor any public officer or person charged with the letting of contracts for the construction, alteration, or repair of public works, shall draft or cause to be drafted specifications for bids, in connection with the construction, alteration, or repair of public works, (1) in a manner that limits the bidding, directly or indirectly, to any one specific concern, or (2) calling for a designated material, product, thing, or service by specific brand or trade name unless the specification is followed by the words "or equal" so that bidders may furnish any equal material, product, thing, or service. In applying this section,



the specifying agency shall, if aware of an equal product manufactured in this state, name that product in the specification. Specifications shall provide a period of time prior to or after, or prior to and after, the award of the contract for submission of data substantiating a request for a substitution of “an equal” item. If no time period is specified, data may be submitted any time within 35 days after the award of the contract.

(b) Subdivision (a) is not applicable if the awarding authority, or its designee, makes a finding that is described in the invitation for bids or request for proposals that a particular material, product, thing, or service is designated by specific brand or trade name for any of the following purposes:

(1) In order that a field test or experiment may be made to determine the product’s suitability for future use.

(2) In order to match other products in use on a particular public improvement either completed or in the course of completion.

(3) In order to obtain a necessary item that is only available from one source.

(4) (A) In order to respond to an emergency declared by a local agency, but only if the declaration is approved by a four-fifths vote of the governing board of the local agency issuing the invitation for bid or request for proposals.

(B) In order to respond to an emergency declared by the state, a state agency, or political subdivision of the state, but only if the facts setting forth the reasons for the finding of the emergency are contained in the public records of the authority issuing the invitation for bid or request for proposals.

SEC. 2. Section 10129 of the Public Contract Code is amended to read:

10129. (a) Notwithstanding Section 3400, no agency of the state charged with the letting of contracts for the construction, alteration, or repair of public works may draft or cause to be drafted specifications for bids, in connection with the construction, alteration, or repair of public works, (1) in a manner that limits the bidding, directly or indirectly, to any one specific concern, or (2) calling for a designated material, product, thing, or service by specific brand or trade name unless the specification is followed by the words “or equal” so that bidders may furnish any equal material, product, thing, or service. In applying this section, the awarding authority shall, if aware of an equal product



manufactured in this state, name that product in the specification. Specifications shall provide a period of time prior to or after, or prior to and after, the award of the contract for submission of data substantiating a request for a substitution of “an equal” item. If no time period is specified, data may be submitted any time within 35 days after the award of the contract.

(b) Subdivision (a) is not applicable if the awarding authority, or its designee, makes a finding that is described in the invitation for bids or request for proposals that a particular material, product, thing, or service is designated by specific brand or trade name for any of the following purposes:

(1) In order that a field test or experiment may be made to determine the product’s suitability for future use.

(2) In order to match other products in use on a particular public improvement either completed or in the course of completion.

(3) In order to obtain a necessary item that is only available from one source.

(4) In order to respond to an emergency declared by the state, a state agency, or political subdivision of the state, but only if the facts setting forth the reasons for the finding of the emergency are contained in the public records of the authority issuing the invitation for bid or request for proposals.

SEC. 3. The amendments made by this act to subdivision (b) of Sections 3400 and 10129 of the Public Contract Code are intended to codify, and not to change the application of, existing California case law.



Approved _____, 2003

Governor

